IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No. 5135 of 2012
Date of decision:- 25.01.2018

Gurinder Pal Singh and anr. ...Appellants

Versus

New India Assurance Co. Ltd. and ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Rajinder Sharma, Advocate
for the appellants.

Mr. Deepak Suri, Advocate
for respondent No. 1.

RITU BAHRI J.

The present appeal has been preferred by the owner and driver-appellants (for short 'the appellants') against the award dated 08.05.2012 passed by the learned Motor Accident Claims Tribunal, Amritsar (for short, 'the Tribunal') granting the recovery rights to the Insurance Company against the present appellants.

The facts in brief are that on 27.11.2010, the deceased along with Tara Singh went to Amritsar on Hero Honda Motorcycle bearing registration NO. PB02-BD-Temp-4768 for giving order of stationery goods for the company at Hide Market, Amritsar. When they reached near Sethi property dealer, ahead of Verka, one swift car bearing No. PJO-22 which was being driven at a very high speed and zig zag manner by respondent No. 1 hit the motorcycle, as a result of which they fell down on the road and sustained grievous injuries on the vital parts of the body of the deceased. They were taken to Nanda Hospital at Verka where deceased died due to sever injuries suffered by him.

The learned Tribunal after going through the evidence led by the parties, awarded the compensation of Rs.07,32,000/- in claim petition No. 25/2011 and Rs.168291/- in claim petition No. 44/2011 . However, the Tribunal gave recovery rights to Insurance Company as respondent No. 1 failed to produce any valid driving licence.

Learned counsel for the appellant at the very outset referred to claim petition filed by the injured wherein also two issues were framed mentioned below:-

4. Whether respondent No. 1 Gagandeep was not having a legal and valid driving license at the time of alleged accident? OPR 3

7. Whether the driver of the vehicle PJO-22 was not having a legal and valid driving license? OPR

The onus to prove this issue was on the Insurance Company. In order to prove issue No. 7, the Insurance Company filed an application for production of documents by the claimants/respondent owner and river. The appellants placed on record original RC, original policy of the vehicle, copy of driving license of respondent No. 2 and its verification by the transport officer. The Insurance Company verified the genuineness of the documents to its satisfaction and thereafter, the Tribunal held that no evidence was adduced by the respondents to prove issue No. 7. The issue was decided against the respondents and in favour of the petitioner.

Learned counsel for respondent No. 3-Insurance Company has admitted the above said fact.

Since appellant No. 2 was having the valid driving licence at the time of accident, as verified by Insurance Company, the award dated 08.05.2012 passed by the Tribunal is modified to the extent that the appellants are not liable to pay compensation and the Insurance Company is liable to make the payment of entire compensation to the claimants.

The appeal stands partly allowed to the above extent.

Further it is hereby directed that the amount of Rs.25,000/- deposited by the appellants at the time of filing of appeal, vide receipt No. 1925 dated 02.02.2016 in the Registry of this Court be returned to them.

25.01.2018 (***RITU BAHRI***)
G Arora ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***No***